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THE LAW OF PUBLIC HOUSING, By William
Ebenstein. University of Wisconsin Press, Madison,
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Niemeyer believes the only possible settlement in international relations is the laying of the spiritual and practical foundations of a system of law which will enable states to function in the manner which they necessarily must if they are to give expression to their inherent significance. A new outlook on the problem of law must prevail, and when this spirit is developed, the solution of organizational problems will be attacked at a higher level. The author essentially believes in a functional system of law divorced from moral exhortations or appeals to shattered authority. "It must be a system of law which will coordinate the respective functions of states—a system which, instead of restricting states, represents and conditions under which their functional ends can best be attained. It must be a system of law which by suggesting a frame of reference for the highest degree of constructiveness in coordinate conduct, stimulates an inherently orderly functioning, and thereby counteracts any arbitrary use of power."

It is well in these times to have so stimulating a discussion presented by one whose background indicates a wide range of scholarship and a deep understanding of the functional approach to political and social philosophy and international law. This is a first-rate study in historical analysis, a fresh investigation of the present breakdown of an orderly system of law, and a stimulating preface for the future of international law.

CHARLES W. PIPKIN *

THE LAW OF PUBLIC HOUSING, By William Ebenstein. University of Wisconsin Press, Madison, 1940. ix, 150. \$1.75,

This small volume is essentially a background book on public housing. In illustration, the first fifty-six pages consist of definite background material (Chapter 1 covers the elements of the housing problem, and Chapter 2, the organized governmental activities in this field), and the last nine pages may be considered in the same light, since they compose a summary of the foreign experience. Forty-three pages are dedicated to "Public Housing and the Law: State." This, notwithstanding the fact that public housing as developed today in this country is decentralized and the legal testing ground is the court rooms of the states. Mr.

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Ebenstein has analyzed only three of the cases involving actions of local housing authorities in his fourth chapter,¹ a somewhat less special treatment than attends zoning and other background case materials.

This is a volume, therefore, which cannot be used as a current hornbook on public housing law, will do very well as an inductor for anyone interested in pursuing the subject.

It contains but 109 pages, with 31 additional pages which set forth the text of the United States Housing Act and the cases of *New York City Housing Authority v. Muller*,² and *Rutherford v. The City of Great Falls*.³ It treats of only three⁴ of the seven fundamental legal problems to which Mr. Leon H. Keyserling, Deputy Administrator and General Counsel of the United States Housing Authority, in early 1939, directed attention in his monograph.⁵ To the other four problems,⁶ the several state courts have addressed themselves in numerous opinions, including those cited by Mr. Ebenstein on pages 70-71 of his book. Additional questions, of sufficient importance to be included in a book bearing a title such as Mr. Ebenstein's, have come before the courts in the evolu-

1. *Spahn v. Stewart*, 268 Ky. 97, 103 S.W. (2d) 651 (1937); *Stockus v. Boston Housing Authority*, 304 Mass. 507, 24 N.E. (2d) 333 (1939); *New York City Housing Authority v. Muller*, 270 N.Y. 333, 1 N.E. (2d) 153, 105 A.L.R. 905 (1936).

2. 270 N.Y. 333, 1 N.E. (2d) 153, 105 A.L.R. 905 (1936).

3. 107 Mont. 512, 86 P. (2d) 656 (1938).

4. Low-rent housing and slum clearance as a valid public purpose; elimination of unfit dwellings by way of the police power; low-rent housing and slum clearance as a public use for the purpose of eminent domain.

5. Housing Monograph Series, No. 2 (1939) *Legal Problems in the Housing Field*, Part 2, "Legal Aspects of Public Housing," at page 42.

6. The Authority as a legal concept; the different questions arising out of state constitutional debt limitations; the validity of state and municipal assistance to local housing authorities; the validity of tax exemption for public housing purposes. A body of law has been produced on these problems, much of it included in the 20 decisions which Mr. Ebenstein cites, but does not discuss, on pages 70-71 of his book. Without analyzing these cases or discussing the various legal problems mentioned therein, the author dismisses them with the statement that they are the only cases in which it has been decided that "in addition to the police and taxing powers the power of eminent domain can be exercised for the purposes of slum-clearance and low-cost housing." He then launches into a discussion of the police power and the power of taxation, discussing such old landmark cases as *Block v. Hirsh*, 256 U.S. 135, 41 S.Ct. 458, 65 L.Ed. 865, 16 A.L.R. 165 (1921) 29, 30, 35, 74; *Village of Euclid, Ohio v. Amber Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303, 54 A.L.R. 1016 (1926) 78; and *Opinion of the Justices to the House of Representatives*, 211 Mass. 624, 98 N.E. 611 (1912) 88, 89. The chapter concludes that "in the field of public housing the courts... have held that all three sovereign powers of the state may be employed—the police power, the taxing power, and the power of eminent domain," but leaves a great deal untold in regard to the legal problems arising in the field of public housing.

tion of public housing law. To mention a few: the question of the legal status of a housing authority has been answered in various ways;⁷ the validity of the creation of a housing authority has been sustained against the objection that such creation involves an unconstitutional delegation of legislative or other powers to the agency;⁸ the legality of cooperation agreements, extending over considerable periods, between cities and local housing authorities covering such matters as the vacating of streets, the rezoning and elimination of a designated number of substandard dwellings, has been set at rest;⁹ the charge that public housing competes with private enterprises has been refuted;¹⁰ the propriety of the construction of housing projects on vacant property as well as in areas previously occupied by such substandard housing has been established.¹¹

The book is not without inaccuracies and inconsistencies. For example, Mr. Ebenstein cites Rhode Island as the only state which has authorized cities, rather than housing authorities, to exercise the right of eminent domain to acquire land for public housing projects. Reference to the statute books discloses that Arizona and New Mexico also belong in this category. The minimum interest rate which the United States Housing Authority may charge on its loans is declared to be not less than the current federal rate plus one-half per cent. By statute it is not the cur-

7. In Alabama, the supreme court declared the housing authority to be an agency of the city, *In re Opinion of the Justices*, 235 Ala. 485, 179 So. 535 (1938). In Pennsylvania, the view was expressed that it was an agency of the Commonwealth, *Dornan v. Philadelphia Housing Authority*, 331 Pa. 209, 200 Atl. 834 (1938). The North Carolina Supreme Court is of the opinion it is a municipal corporation, *Wells v. Housing Authority of Wilmington*, 213 N.C. 744, 197 S.E. 693 (1938), and the Colorado court, that it is a quasi municipal corporation, *People ex rel. Stokes v. Newton*, 106 Colo. 61, 102 P. (2d) 21 (1940).

8. *State ex rel. Porterle v. Housing Authority of New Orleans*, 190 La. 710, 182 So. 725 (1938); *Williamson v. Housing Authority of Augusta*, 186 Ga. 673, 199 S.E. 43 (1938); *Rutherford v. The City of Great Falls*, 107 Mont. 512, 86 P. (2d) 656 (1938); *Dornan v. Philadelphia Housing Authority*, 331 Pa. 209, 200 Atl. 834 (1938).

9. *Housing Authority of the County of Los Angeles v. Dockweiler*, 14 Cal. (2d) 437, 94 P. (2d) 794 (1939); *Marvin v. Housing Authority of Jacksonville*, 133 Fla. 590, 183 So. 145 (1938); *Williamson v. Housing Authority of Augusta*, 186 Ga. 673, 199 S.E. 43 (1938); *Krause v. Peoria Housing Authority*, 370 Ill. 356, 19 N.E. (2d) 193 (1939); *McNulty v. Owens*, 188 S.C. 377, 199 S.E. 425 (1938); *Chapman v. The Huntington, W.Va. Housing Authority*, 121 W. Va. 319, 3 S.E. (2d) 502 (1939).

10. *Porterle v. Housing Authority of New Orleans*, 190 La. 710, 182 So. 725 (1938); *Spahn v. Stewart*, 268 Ky. 97, 103 S. W. (2d) 651 (1937).

11. *Stockus v. Boston Housing Authority*, 304 Mass. 507, 24 N.E. (2d) 333 (1939); *City of Columbus, Ohio v. Columbus Metropolitan Housing Authority* (Opinion rendered June 6, 1940); *Chapman v. The Huntington, W. Va. Housing Authority*, 121 W. Va. 319, 3 S.E. (2d) 502 (1939).

rent federal rate to which one-half per cent is added, but the annual rate specified in the most recently issued bonds of the federal government having a maturity of ten years or more. The case of *Stockus v. Boston Housing Authority*,¹² referred to as the first decision by the Supreme Judicial Court of Massachusetts on slum-clearance and low-rent housing, actually followed by three weeks the decision in *Allydonn Realty Corporation v. Holyoke Housing Authority*.¹³

It is not to be concluded that the author has left us with nothing of value. As I have indicated, within its sphere the book possesses merit. To the extent, however, that the lawyer or the student hopes to find in the volume the law that has been written by the courts with respect to public housing, allowance for the date of publication will do little to relieve a warranted sense of disappointment.

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12. 304 Mass. 507, 24 N.E. (2d) 333 (1939).

13. 304 Mass. 288, 23 N.E. (2d) 665 (1939).

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